

AUG 30 2006

**CERTIFICATE OF FACSIMILE TRANSMISSION  
UNDER 37 CFR §1.8**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted on the date indicated below via facsimile to the United States Patent and Trademark Office, facsimile number (571)-273-8300.

Date: August 30, 2006Julie Campbell  
Julie CampbellIn re application of:  
Shelton

Serial Number: 09/025,279

Filed: February 18, 1998 (Contested)

Title: **Standing Order Database Search System  
and Method for Intranet and Internet  
Application**

Docket No. 050128-1010

**Request for Reconsideration of Petition  
Exhibits L-1, L-2, R-1, W-2, AA – DD  
Exhibits A-G of Exhibit DD****Number of Pages Being Transmitted (including Cover Sheet): 60****BEST AVAILABLE COPY**

AUG 30 2006

CERTIFICATE OF FACSIMILE TRANSMISSION  
UNDER 37 CFR §1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted on the date indicated below via facsimile to the United States Patent and Trademark Office - Facsimile number (571)-273-8300.

*Julie,*  
Date: *I have added these*  
*Exhibits to this* mpbell  
*petition. Please update*  
In re ap *this cover & give to*  
*Scott*  
Serial *Thank you,*  
Filed: *Pandy*  
Title: **Standing Order Database Search System**  
**and Method for Intranet and Internet**  
**Application**

Docket No. 050128-1010

**Request for Reconsideration of Petition**  
**Exhibits AA - DD***L-1, L-2, R-1, W-2**Exhibits A - G & Exhibit DD*

Number of Pages Being Transmitted (including Cover Sheet): (29)

AUG 30 2006

## IN THE UNITED STATES PATENT &amp; TRADEMARK OFFICE

In re application of:	)	
Shelton	)	
Serial Number: 09/025,279	)	
Filed: February 18, 1998 (Contested)	)	
Title: Standing Order Database Search System	)	Docket No. 050128-1010
and Method for Intranet and Internet	)	
Application	)	

REQUEST FOR RECONSIDERATION  
OF PETITION UNDER 37 C.F.R. §1.183

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Applicant hereby requests reconsideration of the Petition under 37 C.F.R. §1.183 filed on August 1, 2005 and the Request for Reconsideration filed on December 14, 2005 in light of (a) evidence recently acquired from a former U.S. Postal Service employee, which proves beyond a shadow of doubt that Applicant's position concerning the date of deposit of a key filing has been correct since first raised by Applicant's counsel just four months after the clerical mistake was made in 1998, and (b) the fact that an issue raised in the original petition remains undecided by the U.S. Patent and Trademark Office (USPTO). A decision dismissing the foregoing Petition was mailed by the USPTO on January 9, 2006. Applicant respectfully requests reconsideration of the following issues.

- The Petition requesting waiver of timeliness was dismissed as untimely under 37 C.F.R. 1.181(f). The USPTO contends that the Petitioner had not exercised adequate diligence and due care between the dismissal of the prior Petition under 37 C.F.R. §1.182 and the filing of the Petition under 37 C.F.R. §1.183 on August 1, 2005.
- The Petition requesting correction of filing date for non-provisional application Serial No. 09/025,279 was dismissed as not meeting the requirements of 37 C.F.R. 1.10(d).

The USPTO contends that the Petitioner has not supplied evidence indicating that the application was deposited with the United States Postal Service on February 17, 1998.

- The Petition requesting correction of filing date for provisional application Serial No. 60/037,869 was not addressed in the decision.

Applicant respectfully disagrees with these findings and requests that the USPTO reconsider, in the interests of fairness to the Applicant, the merits of the August 1, 2005 Petition in light of additional declarations and documentation attached herein. The Applicant is the real victim in this case and the USPTO has the discretion to provide an adequate remedy.

#### **Timeliness Under 37 C.F.R. 1.181(f)**

Applicant respectfully requests that the USPTO reconsider waiver of the timeliness requirement in this particular case. Under 37 C.F.R. § 1.183 Suspension of Rules:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

The Declarations filed with the August 1, 2005 Petition, in addition to the declarations and documentation attached herein, support the following summary of facts.

Applicant's first patent attorney, John Sigalos *timely filed* Petitions on March 31, 1997 and June 10, 1998 to correct errors in the dates assigned to Applicant's filing of a provisional application on February 17, 1997, and of a non-provisional application on February 17, 1998. It took over two years for the USPTO to respond to such correction notices and when Mr. Sigalos received the Decision on the Petition under 37 C.F.R. §1.182 mailed on May 31, 2000 (which merely requested documentation of one of his assertions of underlying facts), he was in a diminished mental state due to the fact that his daughter had died approximately a month earlier, in April 2000. While in this diminished mental state, he placed the decision in a file and forgot about it, never mentioning this fact to Applicant.

Although unaware of the request for documentation sent to Mr. Sigalos, the Applicant was well aware of the anguish being experienced by his counsel upon the death of his daughter. Applicant therefore affirmatively made a change of counsel in an effort to assure that all matters pending before the USPTO were timely and properly handled on his behalf. Applicant's second

patent attorney, Mr. Andrew Hassell was engaged as lead patent counsel shortly after Mr. Sigalos' daughter died. Applicant informed Mr. Hassell that a question had previously arisen regarding the effective filing date to which the non-provisional application was entitled, but unbeknown to Applicant, Mr. Hassell was informed by Mr. Sigalos that, since Mr. Sigalos was personally involved in affecting timely filing so as to obtain the benefit of the filing date of the provisional application, Mr. Sigalos would personally attend to such matter. Accordingly, Mr. Hassell directed his attention to other matters that were involved in the prosecution and appeal of the non-provisional application, once again never mentioning this fact to the Applicant.

Mr. Sigalos failed to inform either Applicant or Applicant's second patent attorney, Mr. Hassell, of his receipt of the May 31, 2000 USPTO Decision, and its request for additional documentation. As evidenced by Exhibits AA-1 through AA-6, both Applicant and Mr. Hassell diligently continued to discuss the status of the petition after May 2000 with Mr. Sigalos. In addition, the original filing date of February 17, 1997 was submitted on prosecution and appeal correspondence sent to the USPTO after May 2000 (see Exhibits BB-1 through BB-5), much of which was reviewed by Mr. Sigalos. This further confirms that Applicant and Mr. Hassell were operating under the understanding that prosecution of the original petition was active and ongoing – an understanding to which Mr. Sigalos never once raised an objection or concern.

The application was dormant for an extended period of time while the claims were being appealed. It was therefore only in June 2005, after the Applicant prevailed on such appeal of all claims and consequently reviewed the file, that Applicant and his patent attorneys became aware of the fact that the documentation sought in the USPTO action on May 31, 2000 had not been supplied and a Request for Reconsideration of the May 31, 2000 Decision had not been filed with the USPTO.

*Immediately upon determining this information*, Applicant instructed his patent attorneys to file the most recent Petition under 37 C.F.R. §1.183; and in fact such Petition was filed on August 1, 2005, which is within a few weeks after realizing that the Request for Reconsideration had not been filed. Applicant hired his third lead patent attorney, *i.e.*, the undersigned Scott Horstemeyer, to prepare and file this most recent Petition.

#### **Filing Date of Non-Provisional Application Under 37 C.F.R. 1.10(d)**

Applicant respectfully requests that the USPTO reconsider correction of the filing date for non-provisional application Serial No. 09/025,279 to the date on which the parcel was placed

into the drop box and accepted by the U.S. Postal Service (USPS) pickup service. Under 37 C.F.R. 1.10(d) Filing of correspondence by "Express Mail":

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

According to the Final Rule Notice published in Federal Register of November 1, 1996:

Section 1.10(a) is amended to provide that: (1) any correspondence received by the Office that was delivered by the "Express Mail Post Office to Addressee" (Express Mail) service of the USPS will be considered filed in the Office on the date of deposit with the USPS, ...

The date of deposit or mailing with the USPS is defined by the USPS as: ... (2) For correspondence that is prepaid (*i.e.*, with a completed mailing label and postage affixed)—the date the prepaid correspondence is accepted by the USPS collection employees or the USPS pickup service. USPS Domestic Mail Manual (DMM) 49, at D-38 (Sept. 1, 1995).

Communications with the Patent and Trademark Office, 61 Fed. Reg. 56,439-56,448, 56,442 (Effective December 2, 1996). The Declarations filed with the August 1, 2005 Petition, in addition to the declarations and documentation attached herein, support the following summary of facts.

Applicant's first patent attorney, John Sigalos filed a provisional application on February 17, 1997. Mr. Sigalos timely filed, via Express Mail, a related non-provisional application on February 17, 1998. Upon receiving confirmation of a February 18, 1998 filing date, Mr. Sigalos

promptly filed a Petition on June 10, 1998 to correct the error in the date assigned to Applicant's filing of the non-provisional application (Exhibit R-1 of the August 1, 2005 Petition). The Petition included a copy of an Express Mail certificate submitted in the original filing on February 17, 1998 in Dallas, Texas and U.S. Postal Service (USPS) correspondence dated March 19, 1998 indicating that the application was deposited on February 17th. The correspondence went on to explain that, because of collection schedule time constraints, a deposited package may not be scanned in at the local Post Office, but rather is scanned at the Air Port Mail Center at some later time. The Petition also included corroborating evidence that the package was stamped received by the USPTO office in Washington, D.C. on February 18, 1998.

After requesting the status of the Petition on October 7, 1999, a USPTO Decision was mailed to Mr. Sigalos on May 31, 2000 dismissing the Petition under 37 C.F.R. §1.10(c). Upon becoming aware of the Decision, Applicant and his patent attorneys exercised diligence and filed a Petition under 37 C.F.R. §1.183 on August 1, 2005. This August 2005 Petition included correspondence between Applicant, Mr. Hassell and Mr. Sigalos reiterating the importance of meeting the February 17, 1998 submission date (Exhibits L-1 and L-2) as well as the cover of Mr. Sigalos' patent prosecution file indicating a filing date of 2/17/98 (page 1 of Exhibit W-2).

Moreover, the Declaration of Mr. Sigalos that was submitted with the August 1, 2005 Petition attests unambiguously that he personally deposited the application in an Express Mail collection box *before* the last pickup of 5 p.m. This Express Mail pickup time is corroborated by the Declaration from Mr. Leslie Cook, Esq. (see Exhibit CC). The combination of the importance of filing the non-provisional application by February 17th and the subsequent petitioning to correct the filing date would have made the details memorable to Mr. Sigalos.

As acknowledged by the USPS correspondence dated March 19, 1998, the application was deposited on February 17th but, because of collection time constraints, was not scanned in at the local Post Office. Instead the package was scanned at the Air Port Mail Center at 1:56 a.m. As indicated by the Declaration of Mr. Sheehan (see Exhibit DD), a former Senior Executive of the USPS in 1998, this was not atypical for Express Mail and – of critical relevance to this matter – for the reasons described in detail in his Declaration, an Express Mail package originating from Texas and received by the USPTO in Washington, D.C. on February 18, 1998 absolutely must have been deposited with the USPS before the last pickup at the originating facility on February 17, 1998. “If the mail piece had missed the last pickup of the evening of February 17, the mail would ... not have reached [Washington, D.C.] before the morning of February 19 – the day *after*

the February 18 delivery date appearing on the PTO receipt.” (See Declaration of Robert J. Sheehan, Exhibit DD, at 18.) This conclusion is entirely consistent with the Petition filed by the applicant’s attorney, Mr. Sigalos, on June 10, 1998.

**Filing Date of Provisional Application Under 37 C.F.R. 1.10(d)**

Applicant respectfully requests that the USPTO correct the filing date for the provisional application Serial No. 60/037,869 from the incorrect date of February 17, 1996 to the correct date of February 17, 1997. The Declarations filed with the August 1, 2005 Petition support the following summary of facts:

Applicant's first patent attorney, John Sigalos filed a provisional application on February 17, 1997. Upon receiving confirmation of a February 10, 1997 filing date, Mr. Sigalos promptly filed a Petition on March 31, 1997 to correct the error in the date assigned to Applicant’s filing of the provisional application. The USPTO sent a “corrected” provisional application filing receipt to Mr. Sigalos indicating filing “corrected” date of February 17, 1996, which date was regrettably still not correct.

Upon discovering the incorrect provisional filing date on the non-provisional confirmation, Mr. Sigalos promptly filed a Petition on June 10, 1998 to correct the error in the revised date assigned to Applicant’s filing of the provisional application. After requesting the status of the Petition on October 7, 1999, a USPTO Decision was mailed to Mr. Sigalos on May 31, 2000 dismissing the Petition under 37 C.F.R. §1.10(c). Upon becoming aware of the Decision, Applicant and his patent attorneys exercised diligence and filed a Petition under 37 C.F.R. §1.183 on August 1, 2005. This August 2005 Petition included correspondence between Applicant, Mr. Hassell and Mr. Sigalos confirming small entity status, inventorship and comments related to the provisional application that are dated after the alleged February 10, 1997 filing date and prior to the claimed February 17, 1997 submission date.

It appears clear from the record that the USPTO understood and intended to correct the erroneous February 10, 1997 date in accordance with the Applicant’s March 31, 1997 Petition, but rather than change the date by seven days to February 17, 1997, as requested by such Petition, the date was erroneously moved back in time by a full year to February 17, 1996. This appears to have been the result of a clerical error and, based on applicant’s repeated requests, it should be corrected so that the now issued patent reflects factually accurate dates.




**Conclusion**

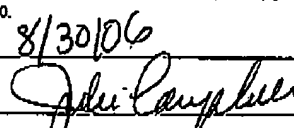
All that Applicant is requesting is that the record be factually accurate. Although now documented in considerably more detail, it is worth noting that the contentions respecting the errors made in properly recording the dates of the provisional and non-provisional applications *are unchanged from the very same contentions that were timely made by Applicant on March 31, 1997 and June 10, 1998, respectively.* As stated at the outset, the Applicant is the true victim here and the USPTO has the clear authority to correct there errors so that the dates reflected are factually correct rather than showing dates that are not only wrong but, as shown herein, manifestly impossible to be accurate. Accordingly, the Applicant respectfully requests that the USPTO waive the timeliness requirement and consider the merits of the August 1, 2005 Petition in light of the recently acquired evidence.

It is believed that no fee is due in connection with this Request for Reconsideration. If, however, any additional fee is required, you are hereby authorized to charge any such fee to Deposit Account No. 20-0778.

Respectfully submitted,

  
Scott A. Horstemeyer  
Registration No. 34,183

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**  
Suite 1750  
100 Galleria Parkway N.W.  
Atlanta, Georgia 30339  
(770) 933-9500

<p align="center"><b>CERTIFICATE OF FACSIMILE TRANSMISSION</b> <b>UNDER 37 CFR §1.8</b></p> <p>I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted on the date indicated below via facsimile to the United States Patent and Trademark Office, facsimile number (571) 273-8300.</p> <p>Date: <u>8/30/06</u></p> <p></p>
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Allcare patent applications

**Subject:** Allcare patent applications  
**From:** John L Sigalos <jlsig1@airmail.net>  
**Date:** Fri, 09 Jan 1998 07:55:12 -0800  
**To:** rbtshelton@linkonline.net

TKHR Docket No. 50128-1010

We must file "regular" patent applications on the two pending provisional patent applications shortly or lose all patent rights thereon.

The first case entitled STANDING ORDER DATABASE SEARCH SYSTEM AND METHOD FOR INTRANET AND INTERNET APPLICATION must be filed by February 17, 1998.

The second case entitled INTERNET-COMPATIBLE SCHEDULING INTERFACE SYSTEM AND METHOD must be filed by March 17, 1998.

I know you have a "full plate", but please call so we can discuss how to handle this matter. Andy will be going back to Colorado in about a week and I would like to have a plan in place before he leaves that will ensure timely filing of the applications.

EXHIBIT L-1

Page 1 of 1

Re: Patent Application

TKHR Docket No. 50128-1010

**Subject:** Re: Patent Application

**From:** John L Sigalos <jlsig1@airmail.net>

**Date:** Thu, 12 Feb 1998 05:12:29 -0800

**To:** MR ANDREW M HASSELL <CNFT02A@prodigy.com>

**CC:** RbtShelton@linkonline.net, HCONNER1@AOL.COM

Andy,

I have mailed to your home in Dallas a copy of the application. It should be there when you arrive on Friday, but certainly on Saturday. Please call me at home on Saturday so we can arrange to discuss the applicatio and get it on file by Feb. 17. I have the application forwarded by Bob on a disc so we can readily make all necessary changes.

John

P.S. My home phone is (972) 661-8548

EXHIBIT L-2

Page 1 of 1

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

A39-972-010

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Shelton, R.H.

Serial No. 09/025,279

Filed: February 18, 1998

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTERNET APPLICATION

Group Art Unit: 2761

Examiner:

PETITION UNDER 37 CFR 1.182The Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Sir:

The Commissioner is respectfully requested to issue a corrected Filing Receipt on the subject application showing the filing date to be February 17, 1998 and the date of filing of the parent provisional application to be February 17, 1997, not 1996.

FACTUAL BACKGROUND

Accompanying this Petition is a Declaration by undersigned attorney for applicant pointing out the fact that he personally deposited the subject application in an Express Mail box maintained by the U.S. Postal Service on February 17, 1998 prior to the time of the scheduled pickup of Express Mail from that box.

The Declaration further shows that as promptly as the Customer Copy of the Express Mail filing was received showing the incorrect date, inquiry was made to the U.S. Postal Service.

279APP 0080

EXHIBIT R-1

Page 1 of 11

RECEIVED  
CENTRAL FAX CENTER TKHR Docket No. 50128-1010

AUG 30 2006

Attached to such Declaration is the response to the inquiry received from the Postal Service dated March 19, 1998 showing that in fact the application was deposited on February 17, 1998, but not scanned into their system until 1:56 a.m., February 18, 1998 when it reached the Airport Mail Center due to Postal Service time constraints.

Thus, the application was filed on February 17, 1998 and it was the Postal Service that delayed in putting it into its system.

The Filing Receipt also incorrectly gives the year of filing of the parent provisional application as 1996 and not 1997. This is an erroneous carry-over from the Filing Receipt in the provisional application. This was an obvious typographical error which is obvious from the record.


This correct filing date is important since it is noted that the prior provisional application on which the instant application is based and to which priority is requested was filed on February 17, 1997 and such priority will be lost if the filing date is not corrected.

The Commissioner, in the interest of justice, is requested to make the correction requested and not to allow delay committed by the U.S. Postal Service to prejudice any rights of applicant to continuity.

The fee of \$130.00 is submitted herewith for this Petition.

June 10, 1998.

Respectfully submitted,

  
John L. Sigalos, Reg. No. 19,043  
Carillon Towers  
13601 Preston Road, Suite 402W  
Dallas, Texas 75240  
Telephone: (972) 770-0024  
Facsimile: (972) 770-0028

2

279APP 0081

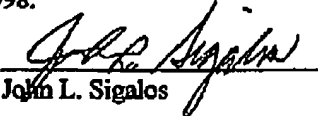
EXHIBIT R-1

Page 2 of 11

TKHR Docket No. 50128-1010

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231 on June 12, 1998.

Date: June 12, 1998  
John L. Sigalos

3

279APP 0082

EXHIBIT R-1

Page 3 of 11

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

A39-972-010

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Shelton, R.H.

Serial No. 09/025,279

Filed: February 18, 1998

For: STANDING ORDER DATABASE )  
SEARCH SYSTEM AND METHOD )  
FOR INTERNET APPLICATION )

Group Art Unit: 2761

Examiner:

DECLARATION OF JOHN L. SIGALOS

I, John L. Sigalos, declare as follows:

1. I am the attorney who prepared and filed the subject application. Attached hereto as "Exhibit A" is a true copy of the transmittal letter showing on the second page that it was deposited by me with the postal service by Express Mail on February 17, 1998.
2. I personally deposited the application in a postal box expressly maintained solely for Express Mail prior to the time that mail was due to be picked up on February 17, 1998.
3. This was one of the first times I used this postal box which is at the building where my new offices are located and to which I moved on February 1, 1998.
4. As promptly as I received the Customer Copy of the Express Mail filing from the Postal Service, a true copy of which is attached hereto as "Exhibit B" and noted the error in the filing date, I promptly contacted the Postal Service for a written explanation for their failure to note the date of February 17, 1998 as the date on which I deposited the application in their postal box.

279APP 0083

EXHIBIT R-1

Page 4 of 11

TKHR Docket No. 50128-1010

5. Attached hereto as "Exhibit C", is a true copy of the letter dated March 19, 1998 received from the U.S. Postal Service acknowledging the application was deposited in their Express Mail collection box on February 17, 1998. They point out that even though a mailpiece is timely placed in one of their Express Mail collection boxes it "may not be" scanned into their system at the local post office and not be "scanned in" until it reaches the Airport mail Center in Dallas. They acknowledge that this is what transpired with the instant Express Mail filing.

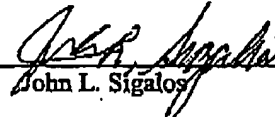
6. Attached hereto as "Exhibit D" is a true copy of the Filing Receipt received in my office on June 8, 1998, showing that, in fact, a filing date of February 18, 1998 has been given to the instant application.

7. It is pointed out that the instant application is the complete application which claims the benefit of the Provisional Application Ser. No. 60/037,869 filed February 17, 1997.

8. It is submitted that applicant should not be prejudiced by the "time constraints of meeting collection schedules" of the Postal Service. The Postal Service acknowledges the application was put in their Express Mail collection box on February 17, 1998 and applicant should be given that date as the filing date of the application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: June 16, 1998

  
John L. Sigalos

2

EXHIBIT R-1

279APP 0084

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AUG 30 2006

TKHR Docket No. 50128-1010

**JOHN L. SIGALOS**  
**Attorney and Counselor at Law**Tel: (972) 770-0024  
Fax: (972) 770-0028Patent, Trademark, Copyright  
& Unfair Competition CausesCarillon Towers  
13601 Preston Road, Suite 402W  
Dallas, Texas 75240

February 17, 1998

A39-972-010

Honorable Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Re: Filing of the Attached Application Under the  
Provisions of 37 CFR 1.53 and 1.10  
Applicants(s): Robert H. Shelton  
Title of Invention: STANDING ORDER DATABASE SEARCH  
SYSTEM AND METHOD FOR INTERNET AND  
INTRANET APPLICATION  
Attorney's File No: A39-972-010


Sir:

Transmitted herewith for assignment of a serial number and filing date are the specification and claims of the subject application, together with an unsigned declaration setting forth in full the inventor's name, residence, and post office address as required by 37 CFR §1.41, together with a copy of the previously signed small entity form, and informal drawings.

Verified statement(s) to establish small entity status under 37 CFR 1.9 and 37 CFR 1.27 was submitted in the parent Provisional application, which is referenced in the Application and Declaration submitted herewith and whose benefit is claimed under 35 U.S.C. 119(e) as provided in 37 CFR §1.28(a). A true copy of such Verified Statement is submitted herewith.

February 17, 1998

Respectfully submitted,

  
John L. Sigalos Reg. No. 19,043  
Carillon Towers  
13601 Preston Road, Suite 402W  
Dallas, Texas 75240  
Telephone: (972) 770-0024  
Facsimile: (972) 770-0028*Exhibit A*  
EXHIBIT R-1

279APP 0085

Page 6 of 11

TKHR Docket No. 50128-1010

Commissioner of Patents and Trademarks  
February 17, 1998  
Page 2

"Express Mail" Label No. EI 229088857US  
Date of Deposit 02/17/98

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service  
"Express Mail Post Office to Address" Service under 37 CFR 1.10 on the date indicated above  
and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

John L. Sigalos

(Typed name of Person Mailing Paper or Fee)

  
(Signature of Person Mailing Paper or Fee)

EI229088857US

279APP 0086

EXHIBIT R-1

Page 7 of 11

TKHR Docket No. 50128-1010


**POST OFFICE TO ADDRESSEE E7 29088857US**

UNITED STATES POSTAL SERVICE

## ORIGIN (POSTAL USE ONLY)

PO ZIP CODE	POST OFFICE NAME	POST OFFICE CITY
07501	NEW YORK	NEW YORK
DATE OF POSTAGE	POSTAGE PAID	POSTAGE PAID
08/29/06	15.00	15.00
TIME TO DELIVER	WEIGHT	WEIGHT
11:00 AM	1.00 LB	1.00 LB
NO DELIVERY	ACCEPTANCE CHARGE	TOTAL POSTAGE
	1.00	15.00

## CUSTOMER USE ONLY

NAME OF ADDRESSEE	ADDRESS
JOHN L. SIGALAS	13501 Preston Road, Suite 402N
	Dallas, Texas 75240
	214-972-010

FOR PICKUP OR TRACKING CALL 1-800-222-1811



Label 11-B October 1995

Exhibit B  
EXHIBIT R-1

279APP 0087  
Page 8 of 11

TKHR Docket No. 50128-1010

DALLAS CUSTOMER SERVICE AND SALES



March 19, 1998

Mr. John Sigalos  
13601 Preston Rd., Ste. 402W  
Dallas, TX 75240-4905


Dear Mr. Sigalos:

This letter is in regard to Express Mail article #E1229088857US that you deposited in the Express Mail collection box on February 17, 1998.

Our investigation revealed that although your Express Mail article was deposited on the 17<sup>th</sup>, it was not scanned into our system until February 18, 1998, when it was processed at the Airport Mail Center in Dallas. When a mailpiece is placed in a collection box, due to time constraints of meeting collection schedules, the Express Mail may not be scanned in at your local Post Office. Therefore, we recommend that for all future Express mailings, especially those that are time-sensitive, you present the mailpiece to a window clerk at the post office. The mailpiece will be scanned in and you will receive a receipt verifying the actual time of mailing and scheduled delivery.

Thank you for using Express Mail. The United States Postal Service values your business and would like to keep you as our satisfied customer. If we may be of further assistance, please contact the Consumer Affairs and Claims Office at (972) 393-6700 and refer to the reference number below.

Sincerely,

*for*   
Johnny J. Bennett  
Manager, Marketing  
951 W. Bethel Rd.  
Coppell, TX 75099-9996

JJB:M:rw

Reference: Z00028873

*Exhibit C*  
EXHIBIT R-1

279APP 0088

Page 9 of 11

TKHR Docket No. 50128-1010

FD-103X  
Rev. 8-05

## FILING RECEIPT

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FILE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
09/025,279	02/18/98	2761	\$0.00	A39-972-010	2	81	2

JOHN L. SIGALOS  
13601 PRESTON ROAD  
SUITE 402W  
DALLAS TX 75240

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of the Filing Receipt with the changes noted thereon.

Applicant(s)

ROBERT H. SHELTON, IRVINE, CA.

CONTINUING DATA AS CLAIMED BY APPLICANT-  
PROVISIONAL APPLICATION NO. 60/037,869 02/17/96

FOREIGN FILING LICENSE GRANTED 06/04/98

## TITLE

STANDING ORDER DATABASE SEARCH SYSTEM AND METHOD FOR INTERNET AND  
INTERNET APPLICATION

PRELIMINARY CLASS: 705

*Exhibit D*

(see reverse)

EXHIBIT R-1

279APP 0089

Page 10 of 11

TKHR Docket No. 50128-1010

THE DATE STAMPED HEREON BY THE U.S. PATENT AND TRADEMARK OFFICE IS  
AN ACKNOWLEDGMENT OF RECEIPT OF THE PAPER(S) IDENTIFIED BELOW:

Description of Paper:

Receipt Date:

Petition Under 37 CFR 1.182, Declaration, Check

Name of Applicant(s):

Shelton, R.H.

Title of Invention:

Serial No.: standing Order Database Search System and  
Patent No.: Method for Internet Application  
09/025,279

Mailed:

06/10/98

Due:

File No.: A39-972-010

TEXAS CENTRAL BANK, N.A. 6144 Walnut Hill Lane Dallas, Texas 75231-4316	LAW OFFICES OF JOHN L. SIGALOS 12900 PRESTON RD., STE. 804 PH. 214-770-0024 DALLAS, TEXAS 75230		1891								
	DATE <u>June 10, 1998</u>		22-1893 (118)								
	PAY TO THE ORDER OF <u>Comm. of Patents &amp; Trademarks</u>		\$ <u>130.00</u>								
	<u>One hundred thirty &amp; 00/100</u>		DOLLARS <input checked="" type="checkbox"/>								
<table border="1"><tr><td colspan="2">App. No. 09/025,279</td><td></td></tr><tr><td colspan="2">Patent Fee</td><td></td></tr><tr><td colspan="2">(A39-972-010)</td><td></td></tr></table>		App. No. 09/025,279			Patent Fee			(A39-972-010)			<u>John L. Sigalos</u>
App. No. 09/025,279											
Patent Fee											
(A39-972-010)											
THIS CHECK IS DELIVERED FOR PAYMENT ON THE ACCOUNTS LISTED											
⑈001891⑈ ⑆111016938⑆ 00 2505 6⑈											

279APP 0079

EXHIBIT R-1

Page 11 of 11



279-072 010

File 2 of 2

TKHR Docket No. 50128-1010

ANDREW M. HASSELL, ESO.  
12568 Burninckoa Lane  
Dallas, Texas 75243  
Tel: 972-234-6540

~~DALLAS, TEXAS 75234-1248~~~~A.C. 214-450-4110~~

ROBERT H. SHELTON

FILED

STANDING ORDER DATABASE SEARCH SYSTEM  
METHOD FOR INTRANET AND INTERNET APPLICATION

IT RECORDED

REEL

FRAME

*Privacy*

OFFICE ACTIONS

AMENDMENTS

CLIENT or TITLE  
DIVISION OF  
CONTINUATION IN PART OFINVENTOR  
CANADIAN

EXHIBIT W-2

279APP 0371

Page 2 of 2



Page 1 of 2  
TKHR Docket No. 50128-1010

**Andrew Hassell**

**From:** "Robert H. Shelton" <RbShelton@worldnet.att.net>  
**To:** "Andrew M Hassell" <ahassell@prodigy.net>  
**Cc:** "Halden Conner" <hconner1@aol.com>; "John Sigalos" <jlsig1@aolmail.net>  
**Sent:** Thursday, June 29, 2000 4:44 PM  
**Subject:** Berkeley Summit Points to Privacy as Critical Issue

See attached article expressing challenges with privacy of individual medical records, and how important a solution to the issue is to the whole industry's future.

I continue to feel that our pending "Private Access" patent application addresses this impediment extremely well. I'm wondering whether we should be providing this kind of article to the USPTO to emphasize that the problem we described in the application is still very much present.

Also, it sure seems like a long time has transpired since we filed that application, with no reply. Should we be checking on its status, if for no other reason than just to make certain nothings been lost in transit...?

ANNEK  
B  
"original"

**<< ONLINE HEALTHCARE GETS CANDID ASSESSMENT AT BERKELEY SUMMIT**

Online healthcare has a long, but promising, road ahead of it, according to some scientists and venture capitalists assessing the state of e-health. At the International Biotech and Infotech Summit in Berkeley this week, attendees said that while the Internet is currently changing science, there is still concern that profitable business models are rare in the world of e-health. Summit participants concluded that Web-based medical records, insurance claims, and prescriptions will eventually succeed, but existing technology can't currently handle the data. Additionally, privacy standards and uniform applications need to be in place before both physicians and patients feel confident in e-healthcare.

View full text: <http://www.epharm5.com/news.asp?an=APRS0017939018> >>

<< Online health care, which right now is largely limited to informational and pharmacy Web sites such as PlanetRx.com and WebMD.com, has been hyped a great deal. But profitable business models - and reasons for investing - are few and far between, Colella said.

To be sure, the Internet could streamline medical records, insurance claims and prescriptions, but the computing power needed to handle all that data is several years away, panelists said. And until better technology and viable business models come along, investing in e-health care is "still an incredibly high risk," Colella said.

EXHIBIT AA-1

8/10/2000

TKHR Docket No. 50128-1010

Page 1 of 3

Andrew Hassell

From: "Andrew Hassell" <AHASSELL@Prodigy.net>  
 To: <RbtShelton@worldnet.att.net>  
 Sent: Monday, July 03, 2000 11:20 AM  
 Subject: Re: Berkeley Summit Points to Privacy as Critical Issue

Talked by telephone with John this morning. He just returned from being out of pocket for a while. Have an appointment with him mid-morning Wednesday to discuss this along with strategy re our scheduling application. Will be back in touch with a report after the meeting.

Andy

— Original Message —

From: "Robert H. Shelton" <RbtShelton@worldnet.att.net>  
 To: "Andrew M Hassell" <ahassell@prodigy.net>  
 Cc: "Halden Conner" <hconner1@aol.com>; "John Sigalos" <jsig1@airmail.net>  
 Sent: Thursday, June 29, 2000 4:44 PM  
 Subject: Berkeley Summit Points to Privacy as Critical Issue

- > See attached article expressing challenges with privacy of individual
- > medical records, and how important a solution to the issue is to the
- > whole industry's future. TKHR Docket No. 50128-1010
- > TKHR Docket No. 50128-1010
- > I continue to feel that our pending "Private Access" patent application
- > addresses this impediment extremely well. I'm wondering whether we
- > should be providing this kind of article to the USPTO to emphasize that
- > the problem we described in the application is still very much present.
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- > application, with no reply. Should we be checking on its status, if for
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- >
- > Online healthcare has a long, but promising, road ahead of it, according
- > to some scientists and venture capitalists assessing the state of
- > e-health. At the International Biotech and Infotech Summit in Berkeley
- > this week, attendees said that while the Internet is currently changing
- > science, there is still concern that profitable business models are rare
- > in the world of e-health. Summit participants concluded that Web-based
- > medical records, insurance claims, and prescriptions will eventually
- > succeed, but existing technology can't currently handle the data.
- > Additionally, privacy standards and uniform applications need to be in
- > place before both physicians and patients feel confident in
- > e-healthcare.

279APP 0332

11/21/2000

EXHIBIT AA-2

TKHR Docket No. 50128-1010

Page 1 of 1

**Andrew Hassell**

**From:** "Andrew Hassell" <AHASSELL@Prodigy.net>  
**To:** "Robert Shelton" <rbtshelton@worldnet.att.net>  
**Cc:** "John L. Sigales" <JLSig1@airmail.net>  
**Sent:** Friday, August 04, 2000 11:32 AM  
**Subject:** Privacy Application

As I recall, during our telephone conversation day before yesterday, you had asked about the Privacy Application.

This morning, I went over to John's office where he and I discussed several items including the status of the Privacy Application. During our discussion I was reminded that our normal 3 month period for response to an outstanding Office Action expires September 6th. Although we can obtain an extension of time, in the interest of cost effectiveness, we should avoid the \$110. fee and target preparing and filing our response within the normal period.

Understand from John that you have a copy of the June 6th Office Action together with the references that were cited and that we are awaiting your comments. If that is not correct, please advise immediately so that I can get any missing documents to you promptly. On the other hand, if you do have the documents, please let John and me have your comments/instructions right away so that we can prepare a proposed response and have time to run it by you for comment well before September 6th.

Thanks and kindest regards.

Andy

EXHIBIT AA-3

01/11/2000

279APP 0421

TKHR) Docket No. 50128-1010

19972 memo 1.wpd

*(sent by e-mail on 08-17-00)*  
August 16, 2000

Subject: US Patent Application SN 09/025,279  
"Standing Order Database Search System and Method  
For Intranet and Internet Application"  
(The Privacy Application)

To: Robert H. Shelton  
John L. Sigalos, Esq.

From: Andrew Hassell

### MEMORANDUM

In reviewing the case file and the outstanding Office Action, there arose several questions for which I would appreciate some help. First of all, with regard to the Examiner's alleged assertion that "the claims are indefinite because internet and intranet are two different concepts, can you supply definitions for each of these terms as they are generally understood by persons of ordinary skill in the art? And do you have some thoughts that would additionally respond to the Examiner's allegation? If that approach is unfruitful, would it make sense to avoid the issue by substituting a generic expression for "internet and intranet"? Perhaps we could use an approach such as "means selected from a group consisting of the internet and intranet for requesting and accessing said medical data" (Clause b of claim 1)

Next, I'm wondering if we can swear behind the Evans reference. Evans filed September 27, 1996; and we filed less than 5 months later, namely, February 17, 1997. As I understand it, John is presently petitioning the USPTO to accord to us February 17<sup>th</sup> as the effective date. If he is successful, (and considerations of equity would suggest that he will be), then we could eliminate Evans if we can comply with the requirements of 37 CFR 1.131 which read in part: "...When any claim of an application or a patent . . . is rejected . . . based on a U.S. patent to another which is prior art . . . the inventor of the subject matter of the rejected claim . . . may submit an appropriate . . . declaration to overcome the patent . . . The . . . declaration must include facts showing . . . a completion of the invention in this country . . . before the filing date of the application on which the U.S. patent issued . . . The showing of facts shall be such, in character and weight, as to establish . . . conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application." (Emphasis added). So, if we can establish conception before September 27, 1996 coupled with diligence in moving the matter forward until we filed on February 17, 1997, we should be able to remove Evans as a reference.

I cannot find in our files any indication of the circumstances surrounding conception, when and where it occurred, what records we have as to such, and what we were doing up till the end of January, 1997. Do you have any such records, Robert? Do you and John have recollection of what you were doing re the matter between September 26, 1996 and February 17, 1997?

EXHIBIT AA-4

279APP 0419

TKHR Docket No. 50128-1010

In responding to the Section 103 rejection, we should include all the reasons why our invention(s) are unobvious. Certainly, filling an important and long-felt need in the art is an important reason. Two articles you, Robert, mentioned, seem relevant to me in supporting our contentions in this regard. These are the "Online Healthcare Gets Candid Assessment at Berkeley Summit" reference and the "Privacy Technology Still Missing the Mark" article. Were these printed somewhere and if so are hard copies available? If so, we should supply them. Do you feel we should add others to the foregoing two?

I'll be working part of today on a draft of an amendment but will proceed only so far until you've had the opportunity to consider the foregoing and respond. Thanks for your help.

(Sgd)

\_\_\_\_\_  
Andrew Hassell

-2-

EXHIBIT AA-4

279APP 0420

TKHR Docket No. 50128-1010

Page 1 of 3

**Andrew Hassell**

**From:** "John I sigalos" <jsig1@aolmail.net>  
**To:** <Rb/Shelton@worldnet.att.net>; "Andrew M. Hassell Esq." <ahassell@prodigy.net>  
**Sent:** Thursday, August 31, 2000 4:59 PM  
**Subject:** Re: Suggestions from John Sigalos re: Amendment to Privacy Application

The new sentences I suggested as set forth in Bob's e-mail should be corrected to read .....explicit suggestion of, or any motivation for, the desirability.....

Regards to all, John

----- Original Message -----

**From:** Robert H. Shelton  
**To:** Andrew M. Hassell Esq.  
**Cc:** John L. Sigalos Esq.  
**Sent:** Thursday, August 31, 2000 12:03 PM  
**Subject:** Suggestions from John Sigalos re: Amendment to Privacy Application

Andy,

I received a call from John Sigalos this morning, who suggested that we should consider adding some further arguments/recent citations to the proposed amendment to our application number 09/025,279. John is headed down to the country for the holiday weekend. However, based on his recognizing the filing deadline of 9/8 for the amendment and the fact that you're not due back into town from Colorado until Friday afternoon and that he will be gone by then, John asked that I follow up with you pertaining to these suggestions.

John's major point was that we should beef-up the argument that appears near the end of page 12 (or beginning of page 13, depending upon your pagination) with the paragraph that begins: "The Action continues 'It would have been obvious to a person of ordinary skill...'"

At the end of that paragraph, following the phrase: "...thereby improving the accuracy and reliability of standing order database search system and method for Internet and Intranet application," John suggests we add the following new sentences: "Such conclusion by the Examiner is unsupported by any implicit or explicit suggestion of any motivation for, or desirability of such modification, in the Evans patent itself or elsewhere. As such, the conclusion of 'obviousness' made by the Examiner is nothing but unsupported opinion, and not a proper basis for rejection."

John recommends that following this paragraph, one or two additional paragraphs be added that provide some additional legal citations supporting our position. In this regard, he has faxed me a recent article written by Bernard S. Hoffman entitled "The Quagmire of Patent Prosecution" from which he believes these citations can be readily adapted by you for the amendment. That article states:

Then the Courts took a complete 180° turn and required the Examiner to identify where the prior art provides a motivating suggestion for the modification, as

3/1/2000

EXHIBIT AA-5

279APP 0406

TKHR Docket No. 50128-1010

Page 1 of 1

**Andrew Hassell**

From: "Andrew Hassell" <AHASSELL@Prodigy.net>  
To: "Robert Shelton" <rbsshelton@worldnet.att.net>  
Cc: "John L. Sigalos" <JLSig@earthlink.net>  
Sent: Wednesday, September 05, 2001 2:19 PM  
Subject: Privacy Application - New Office Action

John telephoned this morning to say that he had just received a new Office Action in response to our Appeal. The Examiner has withdrawn the finality of the Office Action mailed 11/21/2000, stating " Since the Examiner needs to redirect the applicant to another citation and claims 3, 44 receive a new ground of rejection, Examiner withdraws the finality of the final action mailed 11/21/2000. The "other citation" to which he refers is an article titled "A Security Policy Model for Clinical Information Systems" which is cited as "Anderson, R. J., A security policy model for clinical information system, Security and Privacy, 1998, Proceedings., 1998 Symposium on, pages 30-43" It looks as though it was published in the February, 1998 Proceedings of the IEEE.

We have three months from the date of mailing of the latest Action (3 months from August 30, 2001) in which to respond. However, I know we want to push things along at a lively clip; and so I am sending you promptly by surface mail a copy of the Office Action and the cited reference with a request for comments.

John and I conferred this morning. According to the Rules of the USPTO, Section 1.193 (b)(2), "Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application: (i) File a reply under Section 1.111, if the Office Action is not final, or a reply under Section 1.113, if the Office Action is final; or (ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (citing sections) or other evidence are permitted."

At the present, we think our best course of action is to request reinstatement of the appeal coupled with a supplemental appeal brief. However, before making a definite decision, we would like you to have the opportunity to see the documents and to obtain your comments. As you will see, the documents are worded poorly and at times seem ambiguous. Also, many passages in the Detailed Action are partly or wholly copied from the last Office Action of last Autumn.

Preliminarily and prior to carefully re-reviewing the existing appeal brief, Evans and the new reference, I think we have some good grounds for contesting the latest rejection (e.g., I haven't observed any teaching or suggestion in either Evans or the publication for combining their teachings). No doubt other good arguments will emerge when the in-depth study takes place at the time of preparing the supplemental brief.

Will be most interested in hearing your reactions to these latest documents.

With kindest regards and best wishes,

Andy

EXHIBIT AA-6

279APP 0372

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

Attorney Docket: A39-972-011

March 16, 2004

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of

ROBERT H. SHELTON

BEFORE THE BOARD OF

Serial No. 09/025,279

PATENT APPEALS AND

Filed: February 17, 1997

INTERFERENCES

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTRANET AND INTERNET  
APPLICATION

GROUP ART UNIT: 2172

EXAMINER: Jean B. FLEURANTIN

RESPONSE TO ORDER OF AUGUST 13, 2003  
RETURNING UNDOCKETED APPEAL TO EXAMINERHONORABLE COMMISSIONER FOR PATENTS  
ARLINGTON, VIRGINIA 22313

Sir:

Not having received any response to Status Requests of October 28, 2003 and January 26, 2004, the undersigned Attorney of Record telephoned the Examiner on March 16, 2004. During the telephone conversation, the undersigned stated that his record had been checked and that the listing of claims was correct as set forth in the "Request for Reinstatement of the Appeal of 29 November, 2001." It would therefore appear that the mistakes referred to in the Board's Order of August 13, 2003 are the result of an internal clerical error within the United States Patent and Trademark Office.

EXHIBIT BB-1

279APP 0465



RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

Attorney Docket: A39-972-011

January 16, 2004

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of

ROBERT H. SHELTON

Serial No. 09/025,279

Filed: February 17, 1997

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTRANET AND INTERNET  
APPLICATION

GROUP ART UNIT: 2172

EXAMINER: Jean B. FLEURANTIN

BEFORE THE BOARD OF

PATENT APPEALS AND

INTERFERENCES

SECOND STATUS REQUESTHONORABLE COMMISSIONER FOR PATENTS  
ARLINGTON, VIRGINIA 22313

Sir:

By Status Request document mailed October 28, 2003, the undersigned requested information as to the current status of the above-identified application. A copy of that Status Request is enclosed. It has now been more than five months since Appellant's attorney received a copy of the "Order Returning Undocketed Appeal to Examiner" which was mailed August 13, 2003.

This letter is a second request to be informed as to the current status of the matter and when it may be expected that the appeal will be docketed.

Thank you for your early attention to this matter.

279APP 0433

EXHIBIT BB-2

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

Attorney Docket: A39-972-011

March 26, 2003

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of

ROBERT H. SHELTON

Serial No. 09/025,279

Filed: February 17, 1997

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTRANET AND INTERNET  
APPLICATION

GROUP ART UNIT: 2172

EXAMINER: Jean B. FLEURANTIN

BEFORE THE BOARD OF

PATENT APPEALS AND

INTERFERENCES

REQUEST FOR AN ORAL HEARINGHONORABLE COMMISSIONER OF PATENTS  
AND TRADEMARKS  
Washington, D. C. 20231

Sir:

Pursuant to the provisions of 37 CFR 1.194, Appellant respectfully requests an oral hearing of his appeal, designating John L. Sigalos, Esquire (Registration number 19043) to represent him at such oral hearing.

A check in the amount of Two Hundred Eighty Dollars (\$280.00) is enclosed in payment of the relevant fee.

Respectfully,



-1-

EXHIBIT BB-3

279APP 0423

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

Attorney Docket: A39-972-011

September 20, 2002

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of

ROBERT H. SHELTON

Serial No. 09/025,279

Filed: February 17, 1997

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTRANET AND INTERNET  
APPLICATION

GROUP ART UNIT: 2172

EXAMINER: Jean B. FLEURANTIN

BEFORE THE BOARD OF

PATENT APPEALS AND

INTERFERENCES

STATUS REQUESTHONORABLE COMMISSIONER OF PATENTS  
AND TRADEMARKS  
Washington, D. C. 20231

Sir:

On December 10, 2001, Appellant filed a Request for Reinstatement of the Appeal together with the required Supplemental Appeal Brief. Inasmuch as nine months have transpired without any formal response, Appellant asks for a report on the status of the matter together with an estimated time at which the Office expects to respond.

Respectfully,

Andrew M. Hassell  
Registration No. 18182

EXHIBIT BB-4

279APP 0543

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

Attorney Docket: A39-972-011

November 29, 2001

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of

ROBERT H. SHELTON

Serial No. 09/025,279

Filed: February 17, 1997

For: STANDING ORDER DATABASE  
SEARCH SYSTEM AND METHOD  
FOR INTRANET AND INTERNET  
APPLICATION

GROUP ART UNIT: 2172

EXAMINER: Jean B. FLEURANTIN

BEFORE THE BOARD OF  
PATENT APPEALS AND  
INTERFERENCESREQUEST FOR REINSTATEMENT OF THE APPEAL  
UNDER 37 CFR 1.193(b) (2) (ii)HONORABLE COMMISSIONER OF PATENTS  
AND TRADEMARKS  
Washington, D. C. 20231

Sir:

Responsive to the Office Action of August 30, 2001,  
Applicant respectfully requests reinstatement of the Appeal under  
the provisions of 37 CFR 1.193(b) (2) (ii). Pursuant to those  
provisions, the required Supplemental Appeal Brief is submitted  
herewith.

-1-

EXHIBIT BB-5

279APP 0547

Aug 02 06 01:25p

Mason &amp; Petruzzi

972-788-1561

p. 2

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

AUG 30 2006

PATENTS

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## In Re Application of:

Shelton, R. H.

Serial No.: 09/025,279

Filed: February 18, 1998

For: **STANDING ORDER DATABASE SEARCH  
SYSTEM AND METHOD FOR INTERNET  
APPLICATION**

Confirmation No.:

Group Art Unit: 2162

Examiner: Jean B. Fleurantin

Docket No. 50128-1010

DECLARATION OF LESLIE C. COOK

I, Leslie C. Cook, Esq., declare as follows:

1. My name is Leslie C. Cook. I am over 21 years old, and am fully competent to make this declaration. I have personal knowledge of the matters set forth herein and know them to be true and correct.
2. I am a licensed attorney in Texas and have occupied office space at the Carrillon Towers, located at 13601 Preston Road, Dallas, Texas, since 1986.
3. During the time period of 1998, there was an Express Mail collection box located on the property of Carrillon Towers. The U.S. Postal Service has subsequently removed the collection box.
4. During the time period of February 1998, I regularly used this Express Mail collection box and know that the last daily pick up time for the collection box was 5:00 p.m.
5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

## EXHIBIT CC

LOCATION: 972 788 1561

RX TIME 08/02 '06 15:29

Aug 02 06 01:25p Mason & Petruzzi

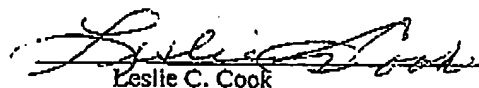
972-788-1561

p.3

TKHR Docket No. 50128-1010

Declaration of Leslie C. Cook  
TKHR Docket No. 50128-1010

DATED on this the 2th day of August 2006.

  
Leslie C. Cook

2

EXHIBIT CC

LOCATION: 972 788 1561

RX TIME 08/02 '06 15:29

RECEIVED  
CENTRAL FAX CENTER

TKHR Docket No. 50128-1010

**AUG 30 2006****DECLARATION OF ROBERT J. SHEEHAN**

1. My name is Robert J. Sheehan. I reside at 21753 Dryden Court, Ashburn, Virginia 20147-6705. I am over 21 years old, have never been convicted of a felony, and am fully competent to make this declaration. I have personal knowledge of the matters set forth herein and know them to be true and correct.

2. I was employed by the United States Postal Service ("USPS" or "Postal Service") from 1968 through December 2003. Between January 2001 and December 2003, I was Manager of Retail Marketing for the Postal Service. In that position, I managed the entire USPS retail network, including 40,000 Post Offices, 15,000 Contract Postal Units, and over 40,000 consignment locations.

3. Between November 1999 and January 2001, I was Associate Vice President, Sales, for the USPS Southeast Region. In that position, I had overall responsibility for commercial sales and service activities for six sales centers comprising 22 districts with revenue of approximately \$10 billion.

4. Between 1996 and 1999, I served as the Atlanta District Manager, Customer Service and Sales. As District Manager, I was responsible for all Postal Service operations in the Atlanta District, which comprised 15,000 employees, made nearly 2 million deliveries annually, and generated more than \$1 billion in annual revenue.

5. From 1993 through 1996, I served as Manager in Plant Operations at USPS Headquarters in Washington, DC. In this position, I had system-wide responsibility for establishing operational policy and programs for Airport Mail Centers, Bulk Mail Centers and Processing and Distribution networks.

6. I held a variety of management positions before 1996, including eight years of service

**EXHIBIT DD**

TKHR Docket No. 50128-1010

as Sectional Center Manager/Postmaster in Orlando, Florida, and Greensboro, North Carolina. Before then, I held a variety of positions in field operations, beginning with my initial position in 1968 as a temporary distribution clerk.

7. I hold a Bachelor Degree in Business Administration from the University of Portland, and an MBA from Suffolk University. I have also attended the Harvard University Program of Management Development.

8. In the course of my responsibilities with the Postal Service, I was personally familiar with the service standards and operational arrangements for the major classes of mail service offered by the Postal Service, including Express Mail, before, during and after February 1998.

9. I have been asked by Allcare Health Management Services, Inc., whether an article of Express Mail received by the U.S. Commissioner of Patents and Trademarks in Washington, D.C., on February 18, 1998, could have been entered by the mailer at a Postal Service facility in the Dallas/Forth Worth area earlier on the same day.

10. In considering this question, I have reviewed a copy of the mailing label from Express Mail article No. EI229088857US (attached as Exhibit A to this Declaration), and a letter dated March 19, 1998, from Johnny J. Bennett, Manager, Marketing, of the USPS Dallas Customer Service and Sales office, to John Sigalos, an attorney for Allcare (attached as Exhibit B to this Declaration). Mr. Bennett's letter reports that an investigation by the Postal Service determined that the article, although scanned and date-stamped during processing at the Airport Mail Center in Dallas on February 18, 1998, was in fact deposited at an Express Mail collection box on the previous day.

11. The conclusion of the Postal Service's investigation—that the mailpiece, although scanned and dated at the DFW Airport Mail Center on or about 1:56 am on February 18, was actually

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entered at a USPS collection facility before the last pickup on February 17—was and is consistent with common operating practice. It was and is not atypical for Express Mail, after its pick up from a collection facility, to be transported directly to the nearby Air Mail Center, and for scanning and date-stamping to be delayed until some time after midnight, particularly at an Air Mail Center as large and busy as the one at DFW Airport.

12. There is an independent reason, however, why the PTO should conclude that article of Express Mail was entered on February 17. The receipt issued by the Patent and Trademark Office (Serial No. 09/025,279), a copy of which is attached as Exhibit C to this Declaration, indicates that the PTO received the mailpiece on February 18, 1998. An article of Express Mail delivered to an addressee in the Washington, D.C., areas on February 18, 1998, *could not have been entered* at a postal facility in the Dallas area after the last scheduled pickup on February 17.

13. Based on my knowledge of the service commitments and transportation arrangements maintained by the Postal Service for Express Mail in February 1998, my professional opinion is that an article of Express Mail entered in Texas and delivered to an addressee in the Washington, D.C., area on February 18, 1998, must have been entered at an originating Postal Service facility on or before its last scheduled pickup on February 17, 1998. If the PTO received the article via Express Mail on February 18, the marking on the Express Mail label (Exhibit A) indicating that the mailpiece was entered on February 18 necessarily was incorrect.

14. Express Mail was and is the most expedited class of mail service offered by the Postal Service. The fastest service commitment offered by the USPS for Express Mail service in 1998, however, was next-day delivery. Although the USPS had previously offered same-day airport-to-airport service, the USPS suspended this service in 1995 and has not reinstated it. My personal

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recollection of these facts is corroborated by the following Postal Service documents:

(a) The March 13, 1997 issue of the USPS *Postal Bulletin* stated (at page 6) that "Same Day Airport Service was suspended in 1995 and is not available until further notice." (emphasis in original). A copy of the publication is attached as Exhibit D. The publication is also posted on the USPS website ([www.usps.com](http://www.usps.com)).

(b) The written testimony of USPS witness Thomas Sharkey, filed by the USPS on July 10, 1997, in U.S. Postal Rate Commission Docket No. R97-1, *Postal Rate and Fee Changes, 1997*, July 10, 1997 stated (at page 8) that "Same Day Airport Service is currently suspended for security reasons." A copy of this testimony is attached as Exhibit E. The testimony is also posted on the Commission website ([www.prc.gov](http://www.prc.gov)).

(c) Paragraph 5001 of the Opinion and Recommended Decision of the Postal Rate Commission in Docket No. R97-1, *Postal Rate and Fee Changes, 1997* (issued May 11, 1998) stated that Express Mail offered "either next-day or second-day delivery" in 1998. Footnote 2 to the same paragraph further stated that "The Postal Service has suspended Same Day Airport [Express Mail] for security reasons." A copy of the relevant portion of the Recommended Decision is attached as Exhibit F. The complete decision is posted on the Commission website ([www.prc.gov](http://www.prc.gov)).

(d) The December 3, 1998, issue of the USPS *Postal Bulletin* stated (at page 9, footnote 1) that "Same Day Airport Service is currently suspended." A copy of this publication is attached as Exhibit G. The publication is also posted on the USPS website ([www.usps.com](http://www.usps.com)).

15. I have also considered whether the Postal Service might have accidentally provided

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same-day delivery of the article on February 18, 1998, even though the Service's published standards for Express Mail did not offer such expedition. Based on my personal knowledge of Postal Service operational arrangements, it is my professional opinion that the air transportation arrangements of the Postal Service in February 1998 precluded same-day service between Texas and Washington, D.C.

16. The Postal Service's cutoff times for entry of originating Express Mail were (and are) dictated by the Postal Service's transportation schedules, particularly the critical dispatch times for the air transportation used to carry Express Mail between origin-destination pairs as distant as Texas and Washington, D.C. In February 1998, the heart of the Express Mail air transportation system was the Express Mail air hub in Indianapolis, Indiana. Each night, at approximately 9-10 pm local time, Postal Service cargo planes loaded with that day's originating Express Mail departed from Dallas/Fort Worth Airport and other originating airports. When the planes landed in Indianapolis, the Express Mail was unloaded, transported to the USPS hub facility, sorted by destination, and reloaded onto the planes for dispatch later that night, or early the next morning, to destination air mail facilities. When the planes reached the destination air mail facilities, the Express Mail was unloaded from the planes, sorted as necessary, and then loaded onto trucks or smaller motor vehicles for delivery to the addressees during the next business day.

17. For a mailpiece entered in Texas to be delivered to the Patent and Trademark Office in Washington DC on February 18, 1998, the mailpiece could have reached the USPS air mail facility serving the DC area (i.e., Dulles Airport) no later than the morning of February 18, and thus necessarily must have left the Indianapolis hub earlier the same morning. That in turn required the mailpiece to have arrived at Indianapolis no later than the wee hours of the morning on February 18. That in turn required the mailpiece to have left the Dallas air mail facility on the night of

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February 17. And that in turn required the mailpiece to have been entered at the originating Postal Service facility no later than the last pickup time on the evening of February 17.

18. If the mailpiece had missed the last pickup of the evening of February 17, the mail would have missed that night's USPS Express Mail flight from Dallas to Indianapolis, and in turn would have missed the connecting flight from Indianapolis to Dulles. The next available Express Mail flight from the Indianapolis hub would not have reached the Dulles air mail facility before the morning of February 19—the day *after* the February 18 delivery date appearing on the PTO receipt.

19. In conclusion, because the USPS did not offer same-day Express Mail service in 1998, and the applicable air transportation schedules precluded same-day service between Texas and Washington, D.C., an Express Mail article originating in Texas and received by the Patent and Trademark Office in Washington, D.C. on February 18, 1998, necessarily must have been deposited with the USPS before the last pickup at the originating facility on February 17, 1998.

20. Further Declarant sayeth not.

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DECLARATION OF ROBERT J. SHEEHAN

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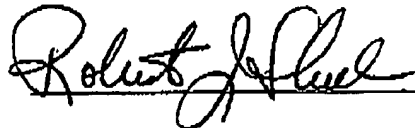
EXHIBIT DD

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**VERIFICATION**

I, Robert J. Sheehan, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 27, 2006.



A handwritten signature in cursive script, reading "Robert J. Sheehan", is written over a horizontal line.

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DECLARATION OF ROBERT J. SHEEHAN

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TKHR Docket No. 50128-1010

DALLAS CUSTOMER SERVICE AND SALES



March 19, 1998

Mr. John Sigalos  
13601 Preston Rd., Ste. 402W  
Dallas, TX 75240-4905

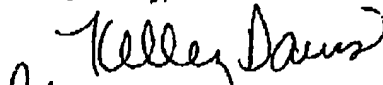
Dear Mr. Sigalos:

This letter is in regard to Express Mail article #E1229088857US that you deposited in the Express Mail collection box on February 17, 1998.

Our investigation revealed that although your Express Mail article was deposited on the 17<sup>th</sup>, it was not scanned into our system until February 18, 1998, when it was processed at the Airport Mail Center in Dallas. When a mailpiece is placed in a collection box, due to time constraints of meeting collection schedules, the Express Mail may not be scanned in at your local Post Office. Therefore, we recommend that for all future Express mailings, especially those that are time-sensitive, you present the mailpiece to a window clerk at the post office. The mailpiece will be scanned in and you will receive a receipt verifying the actual time of mailing and scheduled delivery.

Thank you for using Express Mail. The United States Postal Service values your business and would like to keep you as our satisfied customer. If we may be of further assistance, please contact the Consumer Affairs and Claims Office at (972) 393-6700 and refer to the reference number below.

Sincerely,

  
for Johnny J. Bennett  
Manager, Marketing  
951 W. Bethel Rd.  
Coppell, TX 75099-9996

JJB:M:rw

Reference: Z00026873

Declaration of Robert J. Sheehan  
EXHIBIT B

279APP 0344

TKHR Docket No. 50128-1010

THE DATE STAMPED HEREON BY THE U.S. PATENT AND TRADEMARK OFFICE IS  
AN ACKNOWLEDGMENT OF RECEIPT OF THE PAPER(S) IDENTIFIED BELOW:

Description of Paper:	Receipt Date:
Application, Transmittal, Declaration, Drawings	
Name of Applicant(s):	
Shelton, et al.	
Title of Invention:	

Serial No.: Standing Order Database Search.....  
Patent No.:

Mailed: 02/17/98

Due: A39-972-010

File No.:

36530 U.S. PTO  
09/025279  
02/18/98

Declaration of Robert J. Sheehan  
EXHIBIT C

279APP 0100



TKHR Docket No. 50128-1010

# POSTAL BULLETIN

PUBLISHED SINCE MARCH 4, 1880

PB 21941, MARCH 13, 1997

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**UNITED STATES  
POSTAL SERVICE®**

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POSTAL BULLETIN 21941 (3-13-97)

## Domestic Mail

### POM/DMMT REVISION

#### Express Mail Acceptance and Delivery

Effective immediately, *Domestic Mail Manual Transition (DMMT) Book* chapter 2 standards for Express Mail are revised, reorganized, and transferred to *Postal Operations Manual (POM)* 137.5, 674, and 814.5. This material provides instructions on the acceptance, verification, and delivery of Express Mail, with appropriate references to the *Domestic Mail Manual (DMM)*. These revisions will appear in POM Issue 8.

Material in DMMT 286.1 about shortpaid Express Mail was reviewed and consolidated with the standards in DMM P011.1.6 with the release of DMM Issue 51 (January 1, 1997). The standards for directory service in DMMT 292.3 were transferred to POM 682.4 with the release of POM Issue 7 (August 1, 1996).

The two tables on pages 10 and 11 show the disposition of material in the DMMT. Table I shows the section-by-section transfer of material from the DMMT to the POM and DMM. Table II shows the origin of material in the POM revision.

#### Domestic Mail Manual Transition (DMMT) Book

##### 2 Express Mail

[Delete chapter 2.]

\* \* \* \*

#### Postal Operations Manual (POM)

##### 1 Retail Management

\* \* \* \*

##### 13 Retail Services at Counters

\* \* \* \*

##### 137 Mail Acceptance and Handling

\* \* \* \*

[Redesignate current 137.5 as 137.6 and current 137.6 as 137.7; add new 137.5 to read as follows:]

##### 137.5 Express Mail Acceptance

###### 137.51 Description

Express Mail is available for sending any mailable matter meeting the eligibility standards in DMM E500, the size and weight standards in DMM C500, the preparation standards

in DMM M500, and the postage payment standards in DMM P500. DMM D500 provides standards for service objectives, postage guarantees, and refund conditions. The *International Mail Manual* contains the mailing standards for Express Mail International Service and the available destination countries.

Express Mail is available in five basic service offerings (Same Day Airport Service, Custom Designed Service, Next Day Service, Second Day Service, and Express Mail Military Service). [Same Day Airport Service was suspended in 1995 and is not available until further notice.]

Under DMM D071, Express Mail Custom Designed Service, Next Day Service, and Second Day Service may be used to expedite movement of any other class of mail from one domestic postal facility to another.

##### 137.52 Express Mail Same Day Airport Service

###### 137.521 Acceptance

[Express Mail Same Day Airport Service, part of the *Domestic Mail Classification Schedule* under title 39, *Code of Federal Regulations*, was suspended in 1995. The USPS will not accept items for this service until further notice. The following procedures are included only for completeness.]

Express Mail Same Day Airport Service items are accepted only at designated airport mail facilities (AMFs) at the hours specified by the USPS for delivery between those designated AMFs. Any item mailed under this service may not be collected or dropped into a collection box, and pickup service is not available. A Same Day Airport Service item must be dispatched on the next available transportation to the destination AMF. Upon arrival at the destination AMF, the item must be made available for claim by the addressee by the time determined for the item when accepted at the origin AMF.

###### 137.522 Security

A Same Day Airport Service item is dispatched on a specific airline and a specific flight number, depending on the acceptance time and destination. Because of aviation security and the dispatch of hazardous and other materials having potential risk to personal safety, additional procedures are required for the acceptance of a Same Day Airport Service item.

Declaration of Robert J. Sheehan  
EXHIBIT D

TKHR Docket No. 50128-1010

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

USPS-T-33

RECEIVED  
JUL 10 3 11 PM '97  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

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POSTAL RATE AND FEE CHANGES, 1997

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Docket No. R97-1

DIRECT TESTIMONY  
OF  
THOMAS M. SHARKEY  
ON BEHALF OF  
THE UNITED STATES POSTAL SERVICE

Declaration of Robert J. Sheehan  
EXHIBIT E

## TKHR Docket No. 50128-1010

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1           **B. Express Mail Service Options**

2                   **1. Next Day and Second Day Post Office to Addressee Service**

3           Next Day Post Office to Addressee Service is available for overnight  
4 delivery from designated originating areas or locations. Second Day Post  
5 Office to Addressee Service is available to any domestic destination to which  
6 guaranteed Next Day delivery service is not available from the given originating  
7 office. The Postal Service will refund postage for qualifying Next Day Post  
8 Office to Addressee pieces that are not delivered by noon or 3:00 p.m. of the  
9 next day, and for qualifying Second Day pieces not delivered by noon or 3:00  
10 p.m. of the second day, depending on the service guaranteed to the  
11 destination address.<sup>1</sup> Approximately 98 percent of all Express mail volume is  
12 Next Day or Second Day Post Office to Addressee Service.

13                   **2. Next Day and Second Day Post Office to Post Office Service**

14           Next Day Post Office to Post Office Service is available from  
15 designated 3-digit ZIP code areas for overnight service to designated post  
16 offices. Second Day Post Office to Post Office Service is available to  
17 designated post offices not guaranteed overnight service. The Post Office will  
18 refund postage for Next Day Post Office to Post Office pieces that are not  
19 available for claim by 10:00 a.m. of the next day the post office is open for  
20 retail business. Postage will be refunded for Second Day Post Office pieces not  
21 available for claim by 10:00 a.m. of the second day the destination office is

<sup>1</sup> See Domestic Mail Manual at E500.5.3 at E-87 for acceptance time requirements for Next Day. See Domestic Mail Manual at E500 6.2 at E-87 for acceptance time requirements for Second Day. See Domestic Mail Manual Domestic Mail Manual, D500, 1.3 at D-33 for service objectives and refund conditions.

Declaration of Robert J. Sheehan  
EXHIBIT E

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1 open for retail business. Less than one percent of Express mail volume is

2 Second Day Post Office to Post Office pieces.

3 **3. Custom Designed Service**

4 Custom Designed Service is available only on a scheduled basis for  
5 mailable matter tendered in accordance with a service agreement. For each  
6 Custom Designed shipment that is tendered, the service agreement specifies  
7 the scheduled day and date and places of origin and designation, which may  
8 be virtually any location in the United States. Approximately one percent of  
9 Express Mail is Custom Designed Service.

10 Except where a service agreement provides for claim, or delivery, of  
11 Custom Designed Express Mail more than 24 hours after scheduled tender at  
12 point of origin, the Postal Service will refund postage for such mail not available  
13 for claim, or not delivered, within 24 hours of mailing.<sup>2</sup>

14 **4. Same Day Airport Service**

15 Same Day Airport Service is currently suspended for security reasons.  
16 In the event that circumstances may in the future permit the Service to be  
17 made available again, the Postal Service is requesting new rates. As designed,  
18 Same Day Airport Service is available between designated airport mail  
19 facilities. Mail tendered under this service is dispatched on the next available  
20 transportation to the destination airport facility. The Postal Service will refund  
21 postage for those pieces which are not available for claim at the destination  
22 mail facility at the specified time.<sup>3</sup>

<sup>2</sup> See Domestic Mail Manual, D500, 1.2 at D-33 for service objectives and refund conditions.

<sup>3</sup> See Domestic Mail Manual, D500, 1.1 at D-33 for service objectives and refund conditions.

Declaration of Robert J. Sheehan  
EXHIBIT E

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TKHR Docket No. 50128-1010

RECORDED &  
INDEXED

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION

RECEIVED

May 11 12 31 PM '98

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY*Before:*

Chairman Gleiman, Vice Chairman Haley,  
Commissioners Goldway,\* LeBlanc, and Omas

Postal Rate and Fee Changes, 1997

Docket No. R97-1

OPINION  
AND  
RECOMMENDED DECISION  
VOLUME 1



Washington, DC 20268-0001  
May 11, 1998

Declaration of Robert J. Sheehan  
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\*Commissioner Goldway did not participate in this decision.

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## V. RATES AND RATE DESIGN

### A. Expedited Mail: Express Mail

#### 1. Introduction

[5001] Express Mail is the Postal Service's flagship delivery service and constitutes the only service currently offered within the Expedited Mail Class.<sup>1</sup> Four service options are available for Express Mail and each provides either next-day or second-day delivery with guaranteed performance standards.<sup>2</sup> If the applicable performance standard is not met, postage is refundable. Direct Testimony of Thomas M. Sharkey, USPS-T-33, at 6.

[5002] Express Mail service is available for any mailable matter up to 70 pounds in weight, but combined length and girth of the piece may not exceed 108 inches. Pickup service is available for Express Mail; the current pickup fee is \$4.95. Computerized Tracking and Tracing, which makes acceptance, arrival, and delivery information available to Express Mail customers, was introduced in February, 1992.

[5003] The rate design for Express Mail incorporates simplicity to a significant degree. All rates are unzoned and rounded to the nearest nickel. There is a flat "letter rate" for pieces weighing up to eight ounces, and an "envelope rate" (equivalent to the two-pound rate) for Post Office to Addressee and Post Office to Post Office mailings that can fit into the standardized envelope supplied by the Postal Service. In 1996, Express

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<sup>1</sup> In Docket No. MC95-1, the Commission approved the Postal Service's proposal to establish the Expedited Mail Class, with Express Mail Service as the sole component of that class. PRC Op. MC95-1, para. 6046; Appendix Two at 2-7.

<sup>2</sup> The four service options are: Next Day and Second Day Post Office to Addressee Service; Next Day and Second Day Post Office to Post Office Service; Custom Designed Service, and Same Day Airport Service. Approximately 98 percent of all Express Mail volume is Next Day or Second Day Post Office to Addressee Service. The Postal Service has suspended Same Day Airport Service for security reasons. USPS-T-33 at 6-7.

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Mail accounted for 0.3 percent of total Postal Service volume and 1.4 percent of total revenue. *Ibid.*

[5004] For reasons presented below, the Commission recommends an average increase of nine percent in Express Mail rates and a Post Office to Addressee letter rate of \$11.75. The cost coverage recommended for Express Mail is 114 percent.

## 2. Postal Service Proposal

[5005] The Postal Service proposes a modest increase in Express Mail rates averaging 3.65 percent. The level of this proposed increase is based on witness O'Hara's recommendation of a cost coverage of 205 percent, referenced to volume-variable costs. At the volume levels forecast by witness Musgrave (USPS-T-8 at 44), revenues generated by the Service's proposed rates would exceed the Service's \$710 million estimate of test year incremental costs by \$131 million. USPS-T-33 at 28-29. The Postal Service does not propose any classification change in Express Mail, nor any structural change in its rate schedule. *Id.* at 5, 14. Although the Same Day Airport to Airport Service has been suspended, witness Sharkey develops a proposed set of rates "in the event that security measures are put in place which would enable the Postal Service to offer the service again." *Id.* at 14.

[5006] Witness Sharkey begins development of the proposed Express Mail rates by separating test year Express Mail cost estimates from witness Patelunas' testimony (USPS-T-15) into distance-related transportation costs, non-distance-related transportation costs, and non-transportation costs. Distance-related transportation costs are distributed to zones by service category, based on the distribution of FY 1996 pounds to zones and on allocation factors for air and surface pounds. Non-distance-related costs are distributed to Next Day and Custom Designed total pounds. Transportation cost per pound is then calculated for Same Day, Next Day and Custom Designed. Finally, a non-transportation weight-related cost of two cents per

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# POSTAL BULLETIN

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UNITED STATES  
POSTAL SERVICE.

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[Effective 1-10-99]

**R500 Express Mail****1.0 EXPRESS MAIL—ALL SERVICE LEVELS**

Weight Not Over (pounds)	Service				Weight Not Over (pounds)	Service			
	Same <sup>1</sup> Day Airport	Custom Designed	Next Day & Second Day PO to PO	Next Day & Second Day PO to Addressee		Same <sup>1</sup> Day Airport	Custom Designed	Next Day & Second Day PO to PO	Next Day & Second Day PO to Addressee
1/2		\$9.55	\$9.70	\$11.75	36		65.25	65.40	67.45
1		13.55	13.70	15.75	37		66.45	66.60	68.65
2 <sup>2</sup>		13.55	13.70	15.75	38		67.80	67.95	70.00
3		16.30	16.45	18.50	39		69.05	69.20	71.25
4		19.05	19.20	21.25	40		70.30	70.45	72.50
5		21.80	21.95	24.00	41		71.55	71.70	73.75
6		24.55	24.70	26.75	42		72.90	73.05	75.10
7		27.20	27.35	29.40	43		74.15	74.30	76.35
8		28.40	28.55	30.60	44		75.45	75.60	77.65
9		29.60	29.75	31.80	45		76.75	76.90	78.95
10		30.80	30.95	33.00	46		77.95	78.10	80.15
11		32.25	32.40	34.45	47		79.30	79.45	81.50
12		34.60	34.75	36.80	48		80.55	80.70	82.75
13		35.85	36.00	38.05	49		81.80	81.95	84.00
14		37.20	37.35	39.40	50		83.05	83.20	85.25
15		38.40	38.55	40.60	51		84.40	84.55	86.60
16		39.70	39.85	41.90	52		85.60	85.75	87.80
17		41.05	41.20	43.25	53		86.95	87.10	89.15
18		42.25	42.40	44.45	54		88.20	88.35	90.40
19		43.55	43.70	45.75	55		89.45	89.60	91.65
20		44.85	45.00	47.05	56		90.80	90.95	93.00
21		46.10	46.25	48.30	57		92.00	92.15	94.20
22		47.35	47.50	49.55	58		93.30	93.45	95.50
23		48.70	48.85	50.90	59		94.70	94.85	96.90
24		49.90	50.05	52.10	60		96.20	96.35	98.40
25		51.20	51.35	53.40	61		97.80	97.95	100.00
26		52.45	52.60	54.65	62		99.30	99.45	101.50
27		53.75	53.90	55.95	63		100.80	100.95	103.00
28		55.00	55.15	57.20	64		102.40	102.55	104.60
29		56.30	56.45	58.50	65		103.90	104.05	106.10
30		57.60	57.75	59.80	66		105.50	105.65	107.70
31		58.85	59.00	61.05	67		107.00	107.15	109.20
32		60.15	60.30	62.35	68		108.60	108.75	110.80
33		61.40	61.55	63.60	69		110.10	110.25	112.30
34		62.70	62.85	64.90	70		111.60	111.75	113.80
35		63.95	64.10	66.15					

1 Same Day Airport service is currently suspended.

2 The 2-pound rate is charged for matter sent in a flat-rate envelope provided by the USPS, regardless of the actual weight of the piece.

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